



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

KAMALA D. HARRIS
ATTORNEY GENERAL

February 27, 2012

The Honorable John Boehner
Speaker of the House of Representatives
Office of the Speaker
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
House Minority Leader
House of Representatives
H-204, US Capitol
Washington, DC 20515

RE: H.R. 1837 (Nunes)

Dear House Speaker Boehner and House Minority Leader Pelosi:

I am writing to express my opposition to H.R. 1837, the Sacramento-San Joaquin Valley Water Reliability Act. I am deeply concerned that passage of H.R. 1837 would abrogate long-standing provisions of California law designed to protect the State's natural resources and would violate settled constitutional principles of state sovereignty.

H.R. 1837 would transgress state sovereignty in at least three important respects. First, the legislation would mandate that the federal Central Valley Project (CVP) and the California State Water Project (SWP) operate in perpetuity to fixed water quality standards for the Sacramento-San Joaquin Delta agreed upon in 1994, even though the California State Water Resources Control Board (SWRCB) is presently re-evaluating those standards based upon the almost two decades of new scientific information made available since 1994. Second, the legislation would prohibit the SWRCB and the California Department of Fish and Game (DFG) from exercising their state law responsibilities to protect fishery resources and public trust values where such actions would restrict the diversion and storage of water, not just by the CVP and the SWP, but by virtually any water diverter in the State. Third, the legislation would overturn settled principles of cooperative federalism by vacating the San Joaquin River Restoration Settlement Act and banning the application of State fishery protections to the San Joaquin River operations of the Friant Unit of the CVP.

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These proposed federal constraints on California's ability to manage its natural resources are unprecedented. Over three decades ago, in the seminal decision of *California v. United States* (1978) 438 U.S. 645, 653, former Chief Justice William Rehnquist affirmed California's ability to impose state law terms and conditions on federal reclamation projects, and observed that "[t]he history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress." Under California law, the SWRCB has the continuing authority to review and reconsider all water rights for the purpose of determining whether the exercise of those rights would violate the reasonable use requirements of Article X, Section 2 of the California Constitution or California's public trust doctrine. According to the California Supreme Court in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446, "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." In 2009, the California Legislature expressly adopted these principles as "the foundation of state water management policy." (Cal. Wat. Code, § 85023.) By abrogating the State's ability to apply these principles to water diverters, H.R. 1837 contravenes the long-standing history of deference to state water law described by Chief Justice Rehnquist.

Moreover, H.R. 1837 takes these steps in violation of settled constitutional principles of state sovereignty. Relying upon separation of powers principles set forth in the Tenth Amendment and elsewhere in the U.S. Constitution, the U.S. Supreme Court in *New York v. United States* has held that "Congress may not simply 'commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" (*New York v. United States*, *supra*, 505 U.S. at 161, citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.* (1981) 452 U.S. 264, 288.) In *Printz v. United States*, the U.S. Supreme Court expanded its ruling in *New York* and declared that "[t]oday we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly." *Printz v. United States* (1997) 521 U.S. 898, 935. According to the Court, the constitutional system of dual sovereignty demands that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Id.*)

By compelling the SWP, a state financed and managed water project, to operate based upon 1994 Delta water quality standards, rather than allowing California to develop standards that reflect the most recent scientific information regarding the Delta, H.R. 1837 violates the U.S. Supreme Court's state sovereignty principles. Similarly, by prohibiting the SWRCB, the DFG, or other state agencies from taking action to protect fishery and public trust values other than those contained in the 1994 standards, the legislation further violates these state sovereignty

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rulings. Under H.R. 1837, Congress would have, in effect, unconstitutionally "dragooned" state officers "into administering federal law." (*Id.* at 928.)

I urge you to reject H.R. 1837. It undermines the long history of cooperative federalism and invades an important arena of state sovereignty. It is important to Californians and to all the citizens of this great Nation that the existing legal framework for water resource issues be strengthened and preserved, rather than dismantled.

Sincerely,

A handwritten signature in black ink, appearing to read "Kamala D. Harris", with a long horizontal flourish extending to the right.

KAMALA D. HARRIS
Attorney General

cc: California Congressional Delegation
Senator Dianne Feinstein
Senator Barbara Boxer
Jerry Brown, California Governor
John Laird, California Natural Resources Secretary
Senator Pavley, California Senate Natural Resources and Water Comm. Chair
Assembly Member Huffman, CA Assembly Water, Parks, & Wildlife Comm. Chair